

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

75 7148

MAR 4 1975

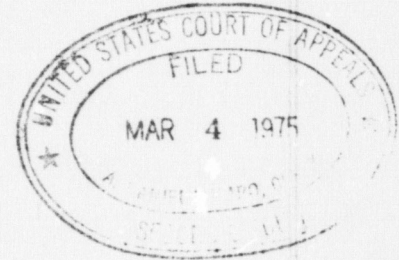
UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

-----)
ANTHONY BAMOND, JR., and MILDRED BAMOND,)
Petitioners,)

- V -

SOLICITOR GENERAL, DEPARTMENT OF JUSTICE,)
and COMMISSIONER OF INTERNAL REVENUE)
and/or His Agents,)

Respondents.)



PETITION FOR A REVIEW OF UNITED STATE DISTRICT

COURTS - MEMORANDUM OPINION No. 41,672

U S D C - S D N Y Docket No. 73 CIV-5155 (LWP)

PETITIONERS, Plead with the Court for a review on the above
entitled case, and request to appear PRO SE.

Dated: Clintondale, New York
February 14, 1975

Respectfully submitted,

Anthony Bamond
Anthony Bamond, Jr., PRO SE

Mildred Bamond
Mildred Bamond

P.O. Box 234, South Street
Clintondale, New York 12515
UNLISTED PHONE (914) 883-6344

Appellant: Appears PRO SE

B
P/S

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IN THE
UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

NO.

ANTHONY BAMOND, JR., and MILDRED BAMOND

Petitioners,

- V -

SOLICITOR GENERAL, DEPARTMENT OF JUSTICE,
and COMMISSIONER OF INTERNAL REVENUE,
and/or His Agents.

Respondents.

ANTHONY BAMOND, JR., and MILDRED BAMOND,
Petition for a Review of Judgement of United States
District Court of the Southern District of New York
entered in the Above-Entitled Case on January 3, 1975.

OPINION BELOW

Opinion of the United States District Court for the Southern
District of New York, Memorandum Opinion No. 43,672, in
USDC-SDNY - 73-CIV-5155-(LWP).

JURISDICTION

The jurisdiction of this Honorable Court is invoked under
Federal Rules of Appellate Procedure.

CONSTITUTION PROVISIONS INVOLVED

1. Amendment I to the Constitution of the United States of America.
Amendment I - Freedom of Opinion (1791)

"Religion, Speech, Press, Assembly, Petition. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

(Underlining added)

2. Amendment V to the Constitution of the United States of America.
Amendment V - Rights of Accused Persons (1791).

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval war or public danger; nor shall any person be subject for nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation." (Underlining Added)

3. Amendment XIV to the Constitution of the United States of America.
Amendment XIV - Limitations of State Action - 1868)

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." (Underlining added)

4. Amendment XVI to the Constitution of the United States of America.
Amendment XVI - Income Tax (1913).

"Congress Given Power to Levy Income Taxes. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." (Underlining added.)

QUESTIONS PRESENTED

I

Should the Internal Revenue Service have the Authority to send "Letters of Deficiency"? Petitioners feel that this practice by-passes the JUDICIAL DEPARTMENT, as that Agency has to send them through the Postal Service, they can easily be sent through the United States Tax Courts, any other service violates the First and Fifth Amendments to the Constitution of the United States of America.

II

Should the Internal Revenue Service have the Authority to issue "Federal Levy"? Petitioners feel that this practice by-passes the JUDICIAL DEPARTMENT, as that agency, upon proper service of "Letter of Deficiency", through the United States Tax Courts is within the provisions of the Constitution of the United States of America, any otherwise preparation of "Federal Levy", violates the Fifth Amendment, as the Comptroller of the State of New York complied with the (unlawful) levy.

III

Should the Internal Revenue Service have the Authority to modify or abrogate the provisions of Amendment XIV-Income Tax (1913) in regard "..the Congress shall have power to lay and collect taxes on incomes, from whatever source derived.", and Petitioners feel the present tax system is discriminating as it allows no assessment for the rich and burdens the working classes.

STATEMENTS OF THE CASE

The Petitioners, Anthony Bamond, Jr. and Mildred Bamond, were assessed \$804.85 Deficiency for Income Taxes of 1970.

The Petitioners were mailed "Letter of Deficiency" by Certified Mail from Albany, New York on October 19, 1972 - Respondents Exhibit "A". (In United States Tax Court- Docket No 847-73). Petitioners answered that notice- Plaintiffs Exhibit No 2 and Exhibit No. 3 (United States District Court-Southern District of New York - Docket No 73-CIV-5155-(LWP)).

The Petitioners contend they have been denied their rights under the Constitution of the United States of America, and the Laws of the Land, with the dismissal of their complaint in (United States Tax Court Docket No 847-73) and in the instant case-(United States District Court, Southern District of New York, Docket No. 73-CIV-5155-(LWP)).

The Petitioners feel that they are entitled to relief, as stated in their "OBJECTION TO: DEFENDANTS MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS COMPLAINT". The First Page, Last Sentence reads, "Whatever relief we seek will be only the value of property that was unlawfully seized and will be multiplied by the factor of 1,000 for proper consideration, and presented to a Court that has jurisdiction in that area."

SUMMARY OF THE ARGUMENTS

A. It would have best served the cause of justice if the United States District Court for the Southern District of New York had considered the pleadings of the Petitioners ProSe during the trial of the case. Inasmuch as their request of October 25, 1972 (Exhibit No. 2 and Exhibit No. 3) of the Internal Revenue Service, District Director's Office, was not complied with; we feel that any points of Law, so cited by the Respondents, have violated the provisions of the First and Fifth Amendments of the Constitution of the United States of America.

B. Had the United States District Court considered the Petitioners pleadings for justice, we feel that the Objections to Motions to Dismiss and Objection to Memorandum in Support of Motion to Dismiss, have not been properly entered into the record. We feel the Court erred as the Respondent's Exhibit "A" shows Administrative Form 843-Dated June 27, 1974-filed by Petitioners "under duress". The record proves that Petitioners filed the necessary administrative claim.

C. Had the United States District Court considered the "OBJECTION TO PRESENT INCOME TAX LAWS: for the violation of Amendment XVI-Income Tax (1913), we feel that a Taxpayer Revolution is on the horizon in today's troubled times. Any delay, in today's troubled times, will only accelerate the times. We may not have to celebrate our 200th anniversary, we may have a real enactment of it.

ARGUMENTS

It would have been served the Cause of Justice if the United States District Court for the Southern District of New York had considered the pleadings of Plaintiffs during the Trial of the Case. Petitioners, therefore, contend they were denied the Fifth Amendment.

The pleadings in the Petitioners Complaint show unto the Court that their rights have been violated in the past pleadings before the United States Tax Court - filed on or about the 1st of February, 1973 - Docket No. 847-73. Dismissed on June 12, 1973.

The 2nd Page of the United States District Court for the Second District of New York Memorandum Opinion No. 41,672 shows:

"Apparently while the matter was still pending in the Tax Court, the IRS on April 9, 1973 notified the taxpayers that a tax refund to which they were entitled for the tax year ending on December 31, 1973 would be applied to the claimed unpaid account for the year 1970". Petitioners feel that this violated Section 6213. Restrictions Applicable to Deficiencies; Petitions to Tax Court. Also the dates of April 30, 1973; June 1973 and July 19, 1973, have also violated Section 6213. Restrictions Applicable to Deficiencies; Petitions to Tax Court.

Petitioners have sent the Justice Department, Internal Revenue Service and the Treasury Department a large amount of correspondence, certified mail and Mailgrams, with only one answer, pursuant to the Freedom of Information Act, for their preparations for the Preservation

of the Freedoms.

Petitioners also sent the IRS Administrative Form 843, as to their Refunds of 1973, and have not received any answer as yet. Petitioners feel that to file Complaints and Motions to the Courts, to only have them dismissed due to the Laws of the Land, have abrogated the provisions of the Constitution of the United States of America.

Petitioners feel that the Court has not complied with their requests of any order entered in the record by the Attorney for the Defendants. Petitioners take exception to have their case classified in the Civil Court, of the Court, and feel the violations of the Freedoms, by Government powers as stated in their Amendment to Complaint, have further denied them of their rights they enjoy under the protection of the Constitution of the United States of America.

Petitioners take exception that on September 26, 1974, when Respondents Motion to Dismiss was due, we were informed by the Court to, "Write the Judge a letter." Petitioners complied with that request, and have not heard, for the record, in regard to this. Petitioners asked the Court, in the letter, for some time, for the request of the Secretary or his delegate, as Sec 6532. Periods of limitation on Suits (a) Suits by Taxpayers for refund (1) General Rule-middle of fourth sentence, etc.

ARGUMENT

POINT TWO

The United States District Court for the Southern District of New York, in the Court's Memorandum Opinion, shows violations of the Laws of the Land.

The pleadings in the Petitioners' Complaint show that Section 6213 Restrictions Applicable to Deficiencies, Petitions to Tax Court, show repeated violations, while before the United States Tax Court-Docket No. 847-73. The total disregard for Justice by the members of the legal staff of the Respondents (Defendants in that case) and the repeated correspondence by the Petitioners (Plaintiffs in that case) certified mail and forewarning them that they will account for their actions, any immunity claimed is not within the scope of the Law. As the Court indicated in its "Memorandum Opinion", page no. 6: "Under these circumstances, the defendants are immune from any action in Court for damages. Barr v Matteo, 360 U.S. 564 (1959)"

Petitioners feel that in the year 1959, with respect for Law and Order, by Governmental Employees, with the exception of the CIA and possibly the FBI, that statute can apply. Now in today's troubled times, with so great a number of Civil Servants, Federal Civil Servants, taking total disregard to the rights of citizens, under the protection of the Constitution of the United States of America and the Laws of the Land...

Petitioners contend with the changing time, that statute no longer applies, and if so, what of the cases before the Courts. We feel that the persons, no longer under the protection of the cloak of immunity, not presently assigned or employed, should be accountable for their actions. For example: Commissioner of Internal Revenue (at that time, on Letter of Deficiency), the Honorable Johnnie M. Walters.

As in the case of our former president, Richard M. Nixon, only upon leaving office could he be held accountable for any of the abuses while in office.

Anthony Bamond, Jr. is presently assigned as an Assistant Superintendent of Construction, assigned to Office of General Services, with the State of New York, since March 13, 1958. Being a State Civil Servant has no such immunity as the Federal Civil Servant, as the record of the violations in the instant case shows.

A Civil Servant should honor the oath of Office upon commencing his trusted position. When it is abused, as in the instant case, where is a citizen to turn, but only to the Courts. We take exception of the conflictions of interest the (defendants) Respondents enjoyed. In the repeated enlargements of time to answer complaint, typed by the Justice Department personnel, and presented to the "Courts" an an order show some cause for border on ethical practice.

ARGUMENT

POINT THREE

The United States District Court for the Southern District of New York in the Violation of the First Amendment.

It would have best served the Cause of Justice if the Court heard our complaint. . Petitioners feel that they have been denied "redress of grievances" by the petition being dismissed.

It would have best served the Cause of Justice if the Court heard, or had it entered into the record, the Complete 26 U.S.C. Sec. 6532. Periods of Limitations on Suits (a Suits by Taxpayers for refund . . (1) General Rule: "No suit or proceeding under section 7422 (a) for the recovery of any Internal Revenue tax, penalty, or other sum, shall be begun before the expiration of such section unless the Secretary or his delegate renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary or his delegate to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates." (Underlining added)

Petitioners sent the Secretary a Mailgram on September 26, 1974, for permission and in the interest of Justice to "render a decision thereon within that time", for the 6 months to be waived, so the Case can proceed. We have received no reply.

WAD 2

The United States District Court for the Southern District of New York-in Violation of the Fifth Amendment.

It would have best served the Cause of Justice if the Court heard, or had entered into the record, the petition to the United States Tax Court - Docket No. 847-73 decision of that Court-Dismissed due to lack of Jurisdiction, on June 12, 1973.

Petitioners have been denied, "Due process of Law", inasmuch as they have not had their day before the Courts. We feel that denial, for the appropriate action before the Court within the jurisdiction, namely: United States District Court for the Southern District of New York, violates the Fifth Amendment of the Constitution of America.

Petitioners take exception of having their pleadings heard before a Civil Court. The United States Grand Jury has jurisdiction in their claim. To have to appear PRO SE was a hardship, due to the unlawful seizures of refunds, unlawful seizures of wages, and the withholding of 1972 and 1973 Income Tax Refunds, has put a financial burden upon the petitioners.

It seems that history repeats itself. All the time spent in audit, U.S. Tax Court, and U.S. District Court, and before Your Honors, in the Preservation of the Freedoms; exactly thirty (30) years ago Anthony Bamond, Jr. fought for the very same thing...we thought then, only to have Governmental Agencies abuse the very things we hold so dear...

The United States District Court, for the Southern District of New York
in Violation of the Fourteenth Amendment.

It would have best served the Cause of Justice if the Court heard,
or had entered into, the record of the petition of the United States Tax
Court-Docket No. 847-73 decision of that Court - Dismissed due to lack
of Jurisdiction on June 12, 1973.

Petitioners have been denied "due process of Law", and denied
"to any person within its jurisdiction the equal protection of Law". In
the illegal seizures, as the Federal Levy was not properly executed.
Your Honors, with the Court's permission, we show unto the Courts:

Levy: a seizure of property by an officer of the Court
in execution of a judgement of the Court, although
in many States it is sufficient if the officer is
physically in the presence of the property and
announces the fact that he is "seizing" it, although
he then allows the property to remain where he
found it.

Petitioners challenge the Authority of the Comptroller of the State
of New York, our employer, for proof of Judgement of the Court. Fact,
the process of Federal Levy, was executed without any notice of the
JUDICIAL DEPARTMENT. Therefore, we feel that we have been denied
the provisions of the Fourteenth Amendment of the Constitution of the
United States of America.

The United States District Court for the Southern District of New York,
in the Violation of the Sixteenth Amendment.

it would have best served the Cause of Justice if the Court heard,
or had entered into the record, the petition of the United States Tax
Court Docket No. 847-73 decision of that Court - Dismissed due to lack
of Jurisdiction on June 12, 1973.

Petitioners have been denied "The Congress shall have power to
lay and collect taxes on incomes, from whatever source derived". In the
present Tax Law system, those who earn none or those who earn above-
average escape the Tax Laws. Laws that are just for the purpose of an
individual. Petitioners feel they have some distinction as they have been
assessed more taxes than the past and present members in good standing
of the Executive Department of the Government.

Petitioners also have been assessed more Federal Income Taxes
than most major corporations and persons earning in the excess of six
figures. Petitioners have warned in our pleadings (Objection to Present
Income Tax Laws) that a Taxpayer Revolution is on the Horizon, and the
200th Anniversary we will celebrate may be the real thing in today's
troubled times.

It was decided in 1875 by the United States Supreme Court which ruled that States and their political subdivisions could not tax except for public purposes.

The Court observed:

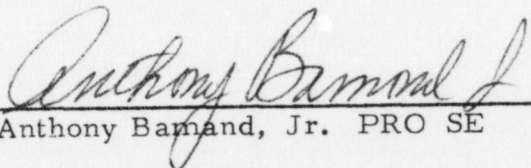
"To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private fortunes, is nonetheless robbery because it is done under the forms of law and is called taxation."

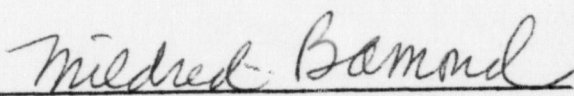
Petitioners feel that the above also applies to Federal Tax Assessment, and will petition the United States Supreme Court for a ruling in today's troubled times.

CONCLUSION

The Judgement of the United States District Court for the Southern District of New York, premised as it is on a misconception of this Court's holding on a question of Federal Constitutional dimensions not heard, should be reversed and petitioners request a reversal, and submit a Motion of Judgement n. o. v. submitted to the lower Court to be entered.

Respectfully submitted,


Anthony Bamond, Jr. PRO SE


Mildred Bamond

P.O. BOX 234, South Street
Clintondale, New York 12515
UNLISTED PHONE: (914) 883-6344

Appellant: Appears PRO SE

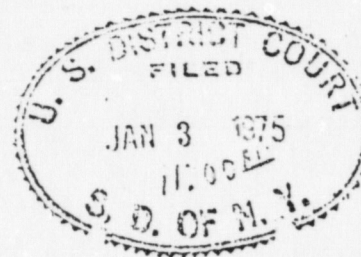
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

APPENDIX

SUMMONS - 73-CIV-5155	December 5, 1973
ORDER	February 19, 1974
ORDER	March 18, 1974
ORDER	April 23, 1974
STIPULATION	May 16, 1974
STIPULATION	June 4, 1974
STIPULATION	July 4, 1974

Mr. Ballaine
73-4012

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
ANTHONY and MILDRED RAMOND, :

Plaintiff, :

- v - :

SOLICITOR GENERAL, et al., :

Defendants. :

-----x

73 Civ. 5155
41672

APPEARANCES:

ANTHONY RAMOND
P.O. Box 234 South Street
Clintondale, New York 12515

Appearing Pro Se

PAUL J. CURRAN
United States Attorney
By: WILLIAM G. BALLAINE, ESQ.
Assistant United States Attorney
United States Courthouse
Foley Square
New York, New York 10007

Attorney for the Defendants

LAWRENCE W. PIERCE, D.J.

MEMORANDUM OPINION

On August 15, 1972 the Internal Revenue Service
completed an audit of plaintiffs' tax return for the year

ending on December 31, 1970. As a result of this audit the IRS concluded that the plaintiffs had underpaid their tax liability and still owed \$396.69. On October 19, 1972 the IRS informed the plaintiffs of this alleged deficiency. On February 1, 1973 the plaintiffs filed a petition with the Tax Court requesting a redetermination of the claimed tax deficiency. On June 14, 1973 this petition was dismissed for lack of jurisdiction since it had not been filed within the time prescribed by sections 6213(a) or 7502 of the Internal Revenue Code of 1954 (Title 26). This order became final on September 12, 1973.

Apparently while the matter was still pending in the Tax Court, the IRS on April 9, 1973 notified the taxpayers that a tax refund to which they were entitled for the tax year ending on December 31, 1972 would be applied to the claimed unpaid account for the year 1970. Shortly thereafter on April 30, 1973 the IRS mailed to the plaintiffs a notice of overdue payment for 1970 in the amount of \$671.10. In June 1973 a second notice was sent but this time the amount claimed to be due was said to be \$682.62. The following month on July 19, 1973 the IRS sent its final notice before seizure claiming that the amount now due was \$688.23. (The amount due was increasing because of interest charges.)

On August 14, 1973 a Notice of Levy was served on the Comptroller of the State of New York. (The plaintiff is employed by the State of New York.) As a result of that levy \$393.52 was deducted from the plaintiff's salary.

On October 23, 1973 another final notice before seizure was sent to the plaintiffs. The amount claimed to be outstanding was \$309.48. Since the plaintiffs failed to pay this amount a second Notice of Levy was served on the State Comptroller. Pursuant to this levy, \$166.37 was deducted from plaintiff's salary.

On January 7, 1974 a third final notice before seizure was sent to the plaintiffs and again a Notice of Levy was served on the State Comptroller. The amount claimed to be still owed was now \$52.49. Apparently this amount was deducted from the plaintiff's salary.

On December 5, 1973 the plaintiffs filed their pro se complaint naming as party defendants the Solicitor General, the Department of Justice and the Commissioner of the IRS. Specifically the plaintiffs alleged that there is a tax refund due them for the years 1970 and 1972. Further, the levies occurring in 1972 are said to have been unlawful. Another levy which apparently took place in 1966 is also said to have been unlawful. In an amendment to the complaint

filed on May 15, 1974 the plaintiffs also claim that they are due a refund for the tax year ending 1973.

The government has moved pursuant to Rules 12(b)(2) and (6) of the Fed.R.Civ.P. to dismiss the complaint for lack of jurisdiction over the subject matter and for failure to state a claim upon which relief can be granted. For the reasons stated below the motion is granted.

In this Court's opinion plaintiffs' complaint is bottomed on the allegation that they do not owe any back taxes but that rather the IRS owes them for refunds. It was the discovery by the IRS that the plaintiffs allegedly owed the government back taxes that gave rise to plaintiffs' present difficulties. However, whether the plaintiffs' claims are meritorious, or not the complaint herein must be dismissed since it is premature.

It is settled that before a district court may entertain a suit for refund of taxes it must first appear that the claimant has complied with the pertinent provisions of the Internal Revenue Code, including 26 U.S.C. §§6532(a) and 7422(a). Zeeman v. United States, 275 F.Supp. 235, 259-260 (S.D.N.Y. 1967). Section 7422(a) of the Internal Revenue Code (Title 18 of the United States Code) clearly provides in part: "No suit or proceeding shall be maintained

in any court for the recovery of any . . . tax alleged to have been erroneously or illegally assessed or collected, . . . until a claim for refund or credit has been duly filed with" the Commissioner of Internal Revenue. It is established that a court has no jurisdiction over a suit for refund of taxes unless a claim for a refund has first been filed.

Mondsheim v. United States, 338 F.Supp. 786, 788 (E.D.N.Y. 1971), aff'd, 469 F.2d 1394 (2d Cir. 1973). Moreover, once such a claim is duly filed, a refund action may still not be brought until the IRS has rendered a final decision on the claim or until six months have expired from the date of filing of the administrative claim, 26 U.S.C. §6532(a).

In this case there is no indication whether plaintiffs have filed the necessary administrative claim as to tax years other than 1970 and 1972 and as to these two years, the IRS has not yet rendered a final decision and plaintiffs have not waited for the requisite six month period to expire. Accordingly, since the plaintiffs have failed to follow the required administrative steps, this Court lacks the power to determine the refund claims.

Lipsett v. United States, 37 F.R.D. 549, 551-552 (S.D.N.Y. 1965), appeal dismissed, 359 F.2d 956 (2d Cir. 1966). The complaint must therefore be dismissed.

The complaint also charges the defendants with using the mails for fraudulent purposes, harassment, and extortion. In addition, a conspiracy is claimed to exist between unknown persons employed by the IRS. Presumably the target of this alleged conspiracy was the plaintiffs. Even assuming that any of these claims are otherwise factually and legally viable, it seems clear that what gave rise to them were the efforts made to collect the purported deficiencies in tax payments. It would seem to follow that these actions related to the official duties of the defendants as officers and agents of the United States. Under these circumstances, the defendants are immune from any action in tort for damages. Barr v. Matteo, 360 U.S. 564 (1959).

Viewing these claims as against the United States rather than individual defendants, the complaint would still be barred since tort claims which arise "in respect of the assessment or collection of any tax" may not be brought against the United States. 28 U.S.C. §2680(c).

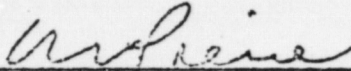
Sprinkled throughout the documents filed by plaintiffs are allegations that the defendants have somehow violated the First, Fifth, Sixth, Ninth, and Sixteenth Amendments to the Constitution. These charges are totally unsupported by the facts alleged. At best what the complaint

alleges is that the efforts used to collect the taxes greatly inconvenienced the plaintiffs.. However, such an inconvenience is scarcely sufficient to give rise to issues of constitutional dimension.

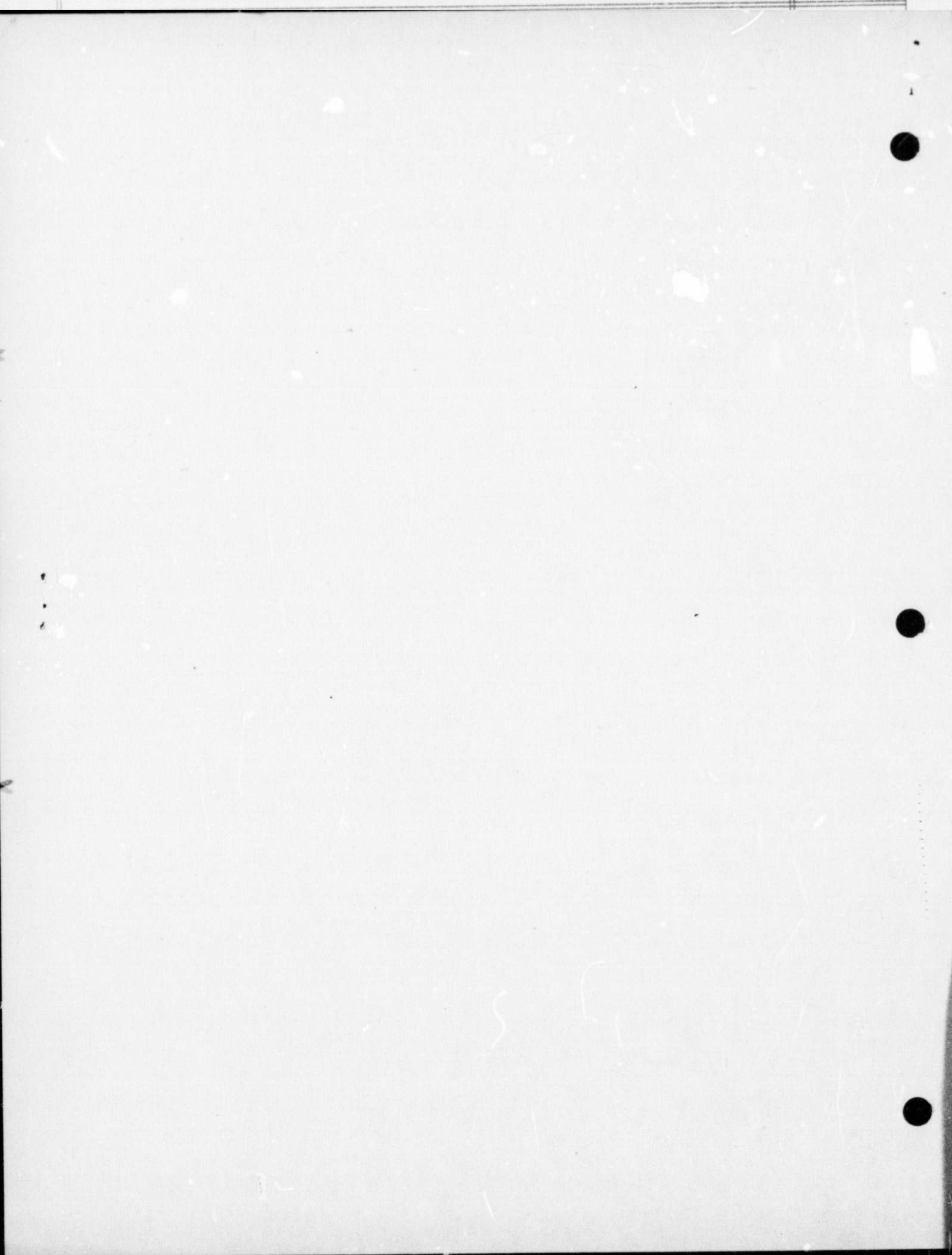
The motion to dismiss the complaint is hereby granted.

SO ORDERED.

Dated: New York, New York
December 31, 1974



LAWRENCE W. PIERCE
U. S. D. J.



MAR 3 1975

CERTIFIED MAIL No. 985700

United States Court of Appeals
Second Circuit
United States Courthouse
Foley Square
New York, New York 10007

February 28, 1975

re: T-4375

Clerk of the Court
Mr. A. Daniel Fusaro

Sir:

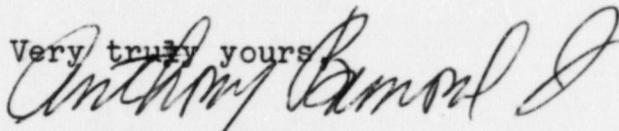
We mailed the following briefs to, this date:

CERTIFIED MAIL No. 985699 to SOLICITOR GENERAL, Department of
Justice, Washington, D. C. 20530
(Two Copies)

CERTIFIED MAIL No. 985698 to COMMISSIONER OF INTERNAL REVENUE
Washington, D. C. 20224
(Two Copies)

CERTIFIED MAIL No. 985697 to UNITED STATES ATTORNEY for the
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007
(Two Copies)

Very truly yours



Anthony Bamond Jr.

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